

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAMIQUE FENNELL, :  
:

Petitioner, :  
:

-against- :  
:

**ORDER**

TIMOTHY MCCARTHY, Superintendent : 20-CV-3764 (GHW) (KNF)  
of Auburn Correctional Facility,  
:

Respondent.  
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KEVIN NATHANIEL FOX  
UNITED STATES MAGISTRATE JUDGE

The petitioner, proceeding pro se, filed a petition under 28 U.S.C. § 2254 for a writ of habeas corpus. On February 24, 2021, the Court vacated its February 8, 2021 Memorandum and Order denying the petitioner's request to stay the petition so he can exhaust his ineffective assistance of appellate counsel claim in state court, noting that the Court will consider the petitioner's January 25, 2021 reply, attached to his February 14, 2021 letter, in determining the motion to stay. Docket Entry No. 36. In the February 14, 2021 letter the petitioner asserted

that if you chose to deny my petition to [hold the petition] in abeyance, I [a]m going to abandon this petition. The issues that have been raised in this petition have no merit. I have to go exhaust my state claims so again, if you still choose to deny my stay [t]hen I don't want this petition heard because I want nothing to do with these meritless points that my "free" attorney raised in the state.

Docket Entry No. 35.

On March 16, 2021, the Court denied the petitioner's request to stay the petition. Docket Entry No.

39. The petitioner shall inform the Court, on or before March 31, 2021, whether he still wishes to

dismiss his petition pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

**The Clerk of Court is directed to mail a copy of this Order to the petitioner.**

Dated: New York, New York  
March 17, 2021

SO ORDERED:

Kevin Nathaniel Fox  
KEVIN NATHANIEL FOX  
UNITED STATES MAGISTRATE JUDGE